

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E.

NEW ENGLAND POWER COMPANY)
25 Research Drive
Westborough, MA 01582)

Petition for exemption of electric
substation from zoning by-law of
West Boylston, Massachusetts.

**MOTION FOR A PROTECTIVE ORDER RE: CRITICAL
ENERGY INFRASTRUCTURE INFORMATION**

I. Introduction

New England Power Company (NEP) hereby requests that the Department of Telecommunications and Energy (Department) grant protection from public disclosure of the confidential and sensitive information submitted in this proceeding as page 4 of Exhibit DML-1. Specifically, this Motion requests protection for the map of the Central Massachusetts Transmission System which has been designated Critical Energy Infrastructure Information. NEP furthermore moves for protection of Mr. Dean Latulipe's testimony that verbally describes the aforementioned map. That text would otherwise be found on pages 4 and 5 of his testimony.

NEP submits this Motion in accordance with G.L. c. 25, §5D and G.L. c. 4, §7, cl. 26(n) as well as the Department's procedural rules at 220 C.M.R. 1.04(5)(a) and (c).

In the instant proceeding, NEP is seeking a zoning exemption from certain provisions of the Town of West Boylston (Massachusetts) Zoning Bylaws. The exemption request, if granted, will allow NEP to proceed with a transmission infrastructure project in West Boylston. As explained in the direct testimony of Mr. Latulipe, the project is needed to reduce the possibility of overload problems and system collapse that could arise if one of the two transformers at the Sandy Pond Substation in Ayer, Massachusetts should fail during heavy load conditions.

Mr. Latulipe's testimony is supported in part by Exhibit DML-1, which includes a map showing the transmission system and critical associated facilities in the Central Massachusetts area. This exhibit has been designated "Critical Energy Infrastructure Information", according to the criteria established in *Critical Energy Infrastructure Information*, 100 FERC ¶ 61,256 (Sept. 5, 2002). National Grid USA and its affiliates provide this document to selected external audiences only on a need-to-know basis for transmission planning purposes. Due to reasonably-based concerns over national

security, NEP seeks a Protective Order for this document and that portion of his testimony describing it in this proceeding. All other exhibits and attachments to the direct testimony of all witnesses and the Petition are provided in full (in both hardcopy and .pdf formats).

NEP is tendering one (1) original of page 4 of Exhibit DML-1 and of pages 4 and 5 of Mr. Latulipe's testimony under seal for Department staff, on the premise that this document will be held in the Department's offices and will not be distributed in hardcopy or on the Department's website unless the Hearing Officer denies this Motion. NEP has redacted the described materials from the .pdf version of exhibits submitted today on CD, pending the Hearing Officer's Order on this Motion.

II. Legal Standard

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

The Department has construed this section of the law very narrowly, in keeping with the statute's presumption that information submitted to the Department is public information deserving of disclosure to the public. *Berkshire Gas Company, et al.*, D.P.U. 93-187/188/189/190, at 16 (1994). However, the statute does allow protection of confidential information where the proponent of protection can substantiate the need for non-disclosure. G.L. c.25 §5D.

In its recent ruling in D.T.E. 98-84 (April 22, 2003), the Department noted the heightened sensitivity of certain types of information in our nation's post-9/11 society and discussed the Legislature's recent enactment of additional statutory protections for Critical Energy Infrastructure Information. To-wit:

With respect to the protection of critical energy infrastructure information, the recent enactment of St. 2002, c.313, §1, inserting G.L. c.4, §7, cl. 26(n), augments the Department's authority to accord nondisclosure protection to records containing certain sensitive information. The newly added Clause 26(n) operates separate and apart from existing Department authority under G.L. c. 25, §5D. Clause 26(n) expressly exempts from the definition of "public records" information concerned with "utilities, transportation or other infrastructure ... the disclosure of which ... is likely to jeopardize public safety." The new clause authorizes the custodian of such records to withhold, where reasonable grounds

exists, such records from inspection and copying under G.L. c. 66, § 10. We note the relevance of this newly added exemption from the statutory definition of 'public records' and the discretionary authority it confers upon the Department ...

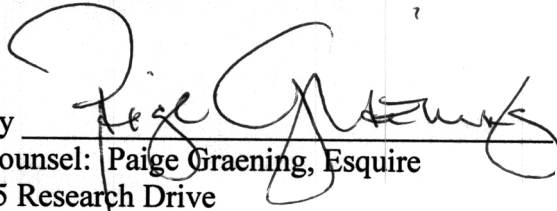
III. The Sealed Information is Highly Sensitive and Warrants Protection from Disclosure.

The information presented on page 4 of Exhibit DML-1 and pages 4 and 5 of Mr. Latulipe's testimony is highly sensitive in that they clearly describe the transmission system of central Massachusetts plus the location, interconnection and regional relationship of specific facilities that comprise the transmission system. This is information that, should it fall into corrupt hands, could be used to damage, stop or otherwise hamper the operation of the region's transmission system. It is the type of information that FERC does not disclose to third parties unless requestors meet certain criteria evidencing their legitimate need to have the information. *Id.* at 74-6. Full public disclosure of this information is not necessary for the Department to make a decision in this proceeding that will benefit the public to be served by the proposed project. Accordingly, NEP respectfully seeks protective treatment for page 4 of Exhibit DML-1 and the relevant sections of pages 4 and 5 of Mr. Latulipe's testimony.

WHEREFORE, for the reasons set forth herein, NEP respectfully requests that the Department grant the requested Motion for a Protective Order, pursuant to G.L. c. 25, §5D and G.L. c.4§7, cl. 26(n) and the Department's procedural rules at 220 C.M.R. §1.04(5)(a) and (c).

Respectfully submitted,

NEW ENGLAND POWER COMPANY

By 
Counsel: Paige Graening, Esquire
25 Research Drive
Westborough, MA 01582